

AMENDED IN SENATE JUNE 11, 2003

AMENDED IN ASSEMBLY MAY 6, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1012

Introduced by Assembly Member Steinberg

(Principal coauthor: Senator McPherson)

(Coauthors: Assembly Members Chavez, Hancock, Runner, and Yee)

(Coauthors: Senators Aanestad, Kuehl, and Machado)

February 20, 2003

An act to add Section 48906.5 to the Education Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1012, as amended, Steinberg. Pupils: interrogation.

Existing law, with certain exceptions, requires a principal or other school official to immediately notify a pupil's parent or guardian if the official releases a pupil to a peace officer for the purpose of removing the pupil from the school premises.

This bill, with certain exceptions, would require the principal of a school to take immediate steps to seek the consent of the parent or guardian of an elementary school pupil prior to making the pupil available to a peace officer for questioning, and with certain exceptions, would prohibit making the pupil available for questioning if the parent or guardian requests that the pupil not be questioned until he or she can be present. The bill would permit a member of the school

administration, a school counselor, or a school teacher, selected by the pupil, to be present at the questioning under prescribed circumstances.

This bill would require the principal, prior to making a minor ~~secondary~~ high school pupil available for questioning by a peace officer, to inform the pupil of the pupil's right to have a person, as prescribed, present during the questioning.

By requiring these local school officials to perform these functions, this bill would impose a state-mandated local program.

This bill would ~~declare that the person, selected by the pupil, make a school officer or staff member who is present in the questioning is~~ immune from civil or criminal liability arising from participation in that questioning.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Community policing and the presence of school resource
4 officers on school campuses serve a vital role fostering a safe
5 learning environment for pupils, faculty, and staff.

6 (b) In order to enable members of the law enforcement
7 community to more effectively fulfill this role, it is the intent of the
8 Legislature to encourage law enforcement officers to form
9 positive relationships with both parents and pupils who are part of
10 the school community.

11 (c) It is also vitally important that parents be given a
12 meaningful opportunity to be active and informed participants in



the educational lives of their children, including situations involving issues of school discipline and interaction with members of the law enforcement community in the school setting.

(d) In furtherance of this objective, it is the intent of the Legislature to increase the level of participation of parents when their minor children are being questioned by law enforcement in school or at a school-sponsored activity.

SEC. 2. Section 48906.5 is added to the Education Code, to read:

48906.5. (a) (1) Before making an elementary school pupil available to a peace officer for the purpose of being questioned by a peace officer, the principal of the elementary school, or his or her designee, shall take immediate steps to obtain the oral consent of the parent or guardian of the pupil to permit the questioning.

(2) If the parent or guardian requests that the pupil not be questioned until he or she can be present, the pupil may not be made available to the peace officer for questioning until the parent or guardian is present.

(3) If school officials are unable, after reasonable efforts, to contact a parent or guardian in order to obtain consent pursuant to this subdivision, ~~a member of the school administration, a school counselor, or a school teacher,~~ *selected a school administrator, school counselor, or school teacher who is reasonably available and selected by the pupil,* shall be present during the questioning.

(4) *If the school administrator, school counselor, or school teacher selected by the pupil declines to be present during the questioning, the principal, or his or her designee, shall be present during the questioning.*

(5) In those cases in which school officials are unable to contact the pupil's parent or guardian, after the questioning has been completed, the principal or his or her designee shall immediately notify the parent or guardian that the questioning has occurred and make the staff member ~~selected by the pupil~~ *who was present during the questioning* available to inform the parent or guardian about the questioning.

(b) (1) Before making a ~~secondary~~ *high* school pupil under 18 years of age available to a peace officer for the purpose of questioning by the peace officer, the principal of the school, or his or her designee, shall inform the pupil that the pupil has the right to request that his or her parent or guardian ~~or other adult selected~~

1 ~~by~~ or an adult family member, or person on the list of emergency
2 contacts for the pupil be present during the questioning.

3 (2) If the person selected by the pupil cannot be made available
4 within a reasonable period of time ~~or declines to be present at the~~
5 ~~questioning~~, the principal or his or her designee shall inform the
6 pupil that the pupil may select as an alternate, a ~~member of the~~
7 ~~school faculty or staff~~ school administrator, school counselor, or
8 school teacher who is reasonably available to be present during the
9 questioning.

10 (3) ~~If the person selected by the pupil declines to be present~~
11 ~~during the questioning, the principal, or his or her designee, shall~~
12 ~~so inform the pupil and advise the pupil that the principal, or his~~
13 ~~or her designee, will be present during the questioning if the pupil~~
14 ~~so requests.~~

15 (4) If the pupil exercises his or her right pursuant to this
16 ~~subdivision to have a parent or guardian or a member of the school~~
17 ~~administration, a school counselor, or a school teacher, present~~
18 ~~during the questioning, the pupil may not be made available to the~~
19 ~~peace officer for questioning until the person designated by the~~
20 ~~pupil is present.~~

21 ~~(e) If the member of the school administration, the school~~
22 ~~counselor, or the teacher, selected by the pupil is the subject of the~~
23 ~~peace officer's questioning, or if the person selected declines to be~~
24 ~~present during the questioning, the principal or his or her designee~~
25 ~~shall so inform the pupil and advise the pupil that he or she may~~
26 ~~select another school administrative staff member, school~~
27 ~~counselor, or teacher.~~

28 ~~(d) Subdivisions (a) to (e), inclusive, do not apply if any of the~~
29 ~~subdivision to have one of the persons designated in paragraph~~
30 ~~(1), (2), or (3) present during the questioning, the pupil may not~~
31 ~~be made available to the peace officer for questioning until that~~
32 ~~person is present.~~

33 (c) Subdivisions (a) and (b) do not apply if any of the following
34 conditions exist:

35 (1) The peace officer reasonably believes that, due to exigent
36 circumstances, the inability of the officer to immediately question
37 the pupil will materially interfere with the ability of the officer to
38 conduct his or her investigation and ~~would present a substantial~~
39 ~~risk of serious harm. In the case of an elementary school pupil~~
40 ~~being questioned pursuant to this paragraph, the principal or his or~~

~~her designee, there is a substantial risk that a suspect may not be apprehended or prosecuted in a timely manner. In that case, if an elementary school pupil is being questioned, the principal or his or her designee shall be present during the questioning and shall take immediate and continuous steps to notify the parent or guardian by telephone about the questioning, and if unsuccessful in doing so before the questioning, shall take immediate steps to notify the parent or guardian about the questioning after the questioning has been completed. If a high school pupil is being questioned, the pupil shall be given the option of having the principal or his or her designee present during the questioning.~~

(2) ~~The peace officer reasonably believes that there is an immediate threat of personal injury to the pupil or any other person on or around the school campus. In the case of an elementary school pupil being questioned pursuant to this paragraph, the principal or his or her designee, shall take a substantial risk of immediate personal injury or substantial property damage. In that case, if an elementary school pupil is being questioned, the principal or his or her designee shall be present during the questioning and shall take immediate and continuous steps to notify the parent or guardian by telephone regarding the questioning, and if unsuccessful in doing so before the questioning is completed, shall take immediate steps to notify the parent or guardian regarding the questioning after it has been completed. If a high school pupil is being questioned, the pupil shall be given the option of having the principal or his or her designee present during the questioning.~~

(3) The minor pupil being questioned is suspected of being a victim of child abuse as defined in Section 11165.6 of the Penal Code, or the minor pupil is being questioned pursuant to Section 305 of the Welfare and Institutions Code, and either the principal or his or her designee or the peace officer has reasonable belief that the pupil would be endangered by the notification requirements of subdivisions (a) to (c), inclusive.

~~(4) The peace officer's questioning of the pupil concerns the commission of criminal activity by the parent or guardian of the pupil. If the peace officer's questioning concerns the commission of criminal activity by the parent or guardian of the pupil, the principal of the school, or his or her designee, shall inform the pupil that the pupil has the right to request that a member of the~~

1 ~~school administration, a school counselor, or a school teacher,~~
2 ~~selected by the pupil be present during the questioning.~~
3 *subdivision (a) or (b). In that case, if the pupil is an elementary*
4 *school pupil, the principal of the school, or his or her designee,*
5 *shall inform the pupil that the pupil has the right to select a school*
6 *administrator, school counselor, or school teacher who is*
7 *reasonably available to be present during the questioning, as*
8 *provided in paragraphs (3) and (4) of subdivision (a). If the pupil*
9 *is a high school pupil, the principal of the school, or his or her*
10 *designee, shall inform the pupil that the pupil has the right to select*
11 *another person to be present during the questioning, as provided*
12 *in subdivision (b).*

13 *(4) (A) In the case of an elementary school pupil, the peace*
14 *officer's questioning of the pupil concerns the commission of*
15 *criminal activity by the person who would otherwise be present*
16 *during the questioning pursuant to subdivision (a). In that case,*
17 *the principal of the school, or his or her designee, shall inform the*
18 *pupil that the pupil has the right to select a school administrator,*
19 *school counselor, or school teacher who is reasonably available to*
20 *be present during the questioning as provided in subdivision (a).*

21 *(B) In the case of a high school pupil, the peace officer's*
22 *questioning of the pupil concerns the commission of criminal*
23 *activity by the person selected by the pupil pursuant to subdivision*
24 *(b). In that case, the principal or his or her designee shall so inform*
25 *the pupil and advise the pupil that he or she may select another*
26 *person to be present during the questioning, as provided in*
27 *subdivision (b).*

28 *(5) The pupil is on probation or parole and is being interviewed*
29 *or otherwise contacted by a probation or parole officer in the*
30 *normal course of duties of the probation or parole officer.*

31 ~~(e)–~~

32 *(d) Except in exigent circumstances as determined by the peace*
33 *officer, any questioning of a pupil by a peace officer for any reason*
34 *other than the ordinary, day-to-day conversation that is to be*
35 *expected among members of a school community, shall take place*
36 *in a private location, including, but not limited to, the principal's*
37 *office, and may not take place in a classroom or hallway or other*
38 *areas where pupils or others may be present.*

39 ~~(f)–~~

1 (e) A school official present during the questioning of a pupil
2 under this section may not disclose matters discussed with the
3 pupil other than to the parent or guardian of the pupil, the attorney
4 for the pupil, other school officials, or a court.

5 ~~(g)~~

6 (f) Any school officer or staff member present, ~~at the request of~~
7 ~~a pupil~~, at the questioning of the pupil by a peace officer pursuant
8 to this section is immune from civil or criminal liability arising
9 from his or her participation during the questioning of the pupil.

10 ~~(h)~~

11 (g) The failure of school officials to comply with this section
12 does not render any evidence, otherwise lawfully obtained by a
13 peace officer, inadmissible in a court of law or result in any other
14 sanction in a criminal trial.

15 ~~(i)~~

16 (h) For the purposes of this section, “questioning” means any
17 communication with a minor pupil during school hours or during
18 any school-related activity or school-sponsored activity by a peace
19 officer, where the pupil is made available to the peace officer either
20 at the request of a peace officer or at the request of a school
21 employee for questioning as a victim, suspect, or person with
22 information concerning a suspected violation of school rules that
23 constitute grounds for expulsion or a suspected commission of a
24 crime.

25 (i) *For the purposes of this section “elementary school pupils”*
26 *are the pupils who are enrolled in kindergarten or any of grades*
27 *1 to 8, inclusive. “High school pupils” are the pupils who are*
28 *enrolled in any of grades 9 to 12, inclusive.*

29 SEC. 3. Notwithstanding Section 17610 of the Government
30 Code, if the Commission on State Mandates determines that this
31 act contains costs mandated by the state, reimbursement to local
32 agencies and school districts for those costs shall be made pursuant
33 to Part 7 (commencing with Section 17500) of Division 4 of Title
34 2 of the Government Code. If the statewide cost of the claim for
35 reimbursement does not exceed one million dollars (\$1,000,000),
36 reimbursement shall be made from the State Mandates Claims
37 Fund.